In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-127

ALLEN M. EARLY AND JEANNETTE B. EARLY,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (Pet. App. B1–B11) is reported at 52 T.C. 560. The opinion of the court of appeals (Pet. App. A1–A12) is not yet reported.

JURISDICTION

The court of appeals entered an opinion and judgment on May 21, 1971 (Pet. App. A1–A12). A petition for rehearing was denied on June 16, 1971. The petition for a writ of certiorari was filed on July 26, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

442-497—71

QUESTION PRESENTED

A dispute over petitioners' ownership of certain stock, claimed by petitioners to have been acquired by gift, was settled by relinquishment of the stock in exchange for a joint life interest in the income of a trust. The question presented is whether amortization of the alleged cost basis of the acquired interest is precluded by Section 273 of the Internal Revenue Code of 1954, which prohibits amortization of a life or terminable interest acquired by gift.

STATUTES INVOLVED

The pertinent statutes are set forth in the petition (pp. 2–4).

STATEMENT

Petitioner,[1] a certified accountant, maintained the books and records of Sam N. Van Vert for a number of years. Petitioners and the Van Verts became friends, and when Mr. Van Vert died in 1954, petitioner continued to maintain his widow's books and records. Petitioner also kept in his possession the widow's stock certificates, deeds and bonds. (Pet. App. B2–B3.)

On November 11, 1957, petitioner prepared a number of stock powers covering 70,000 shares of El Paso Natural Gas Company stock owned by the widow, naming himself as transferee of 50,000 shares and his wife as transferee of the remaining 20,000. The widow's signatures on the powers were guaranteed authentic by a bank official. The powers contained

[1] References to petitioner are to Allen M. Early. References to petitioners are to Mr. Early and his wife Jeannette.

no reservations. The substance of this transaction was not divulged to others during the widow's life. (Pet. App. B3.)

The widow died on August 12, 1958, leaving a will and codicil which provided, *inter alia,* for $20,000 to petitioners. All relatives were specifically excluded as beneficiaries, and most of the residue of the estate was transferred to the widow's physician for life, remainder to charity. At the time of the widow's death, petitioner was in possession of the El Paso stock and the stock powers, and he and his wife claimed ownership of the stock through a 1957 *inter vivos* gift from the widow, subject to the widow's retained life interest. (Pet. App. B3–B4.)

The will and codicil were contested by 44 of the widow's claimed heirs on the grounds of her lack of testamentary capacity, and undue influence on the part of some of the beneficiaries. In addition, certain contestants and beneficiaries objected to petitioners' retention of the El Paso stock and threatened to bring suit to have it declared an asset of the estate. In November, 1959, all interested parties executed a settlement agreement under which petitioners agreed to transfer all of the El Paso stock to the estate in exchange for 32 percent of the income from the entire estate for their joint lives.[2] The stock powers were declared null and void and were destroyed. (Pet. App. B4.)

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[2] The amount received by petitioners was to be reduced by $4,000 in each of the first four years (Pet. App. B4).

In their federal income tax returns for 1961–1965, petitioners claimed that they were entitled to amortize the value of their life interest in the widow's estate over their joint expected lives. The Commissioner disallowed the amortization deductions on the grounds that the life estate was obtained in compromise of petitioners' claim to ownership of the stock by gifts; that under *Lyeth* v. *Hoey*, 305 U.S. 188, the life interest itself must be deemed acquired by gift; and that Section 273 of the Internal Revenue Code specifically prohibits the amortization of life interests acquired by gift. The Tax Court allowed the deductions, reasoning that, unlike the situation in *Lyeth*, petitioners here already held the stock under a "bona fide claim of title," so that the subsequent exchange of the claim of title for the life interest did not constitute a gift (Pet. App. B7–B8). The court of appeals reversed, upholding the Commissioner's position (Pet. App. A5–A12).

ARGUMENT

The decision below is correct. There is no conflict of decisions or other reason for review by this Court.

Section 273 of the 1954 Code prohibits amortization of a life or terminable interest acquired by "gift," "bequest" or "inheritance." In the instant case, the court of appeals properly rejected petitioners' claim that their interest was acquired by purchase, holding that (Pet. App. A6–A12) petitioners' life interest was acquired by gift, since it was obtained as a result of a settlement with respect to disputed claims to the El Paso stock which they allegedly received by gift.

Petitioners' contention (Pet. 8–11) that this holding ignores the Tax Court's finding that they had "good title" to the stock before the compromise is incorrect. The Tax Court termed petitioners' interest in the stock prior to the compromise as "claimed ownership" (Pet. App. B3) or a "bona fide claim of title" to the stock (Pet. App. B7), not "good title" or outright ownership.

Petitioners' relinquishment to the alleged donor's estate, under threat of litigation, of their "bona fide claim of title" to the stock, allegedly received by gift, in return for a 32 percent life interest in the entire estate, brings this case squarely within the rationale of *Lyeth* v. *Hoey*, 305 U.S. 188. *Lyeth* holds that the subject matter of a compromised claim carries over to characterize a settlement payment for tax purposes. It is not inapplicable, as petitioners assert, on the ground that what the taxpayer there received was obtained because of his threat to bring suit as an heir against the estate, while here petitioners already had possession of the property under a "bona fide claim of title." As the court of appeals held (Pet. App. A7), "so long as the settlement is in substantial measure to resolve an underlying and disputed claim based upon a purported gift, bequest, inheritance or the like, what is received in settlement must be characterized, for tax purposes, by the nature of the underlying and disputed claim resolved."

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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CERTIORARI
DENIED
N.C.R.